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June 24, 2009

Honorable Michael J. Copps, Chairman
Honorable Jonathan S. Adelstein, Commissioner
Honorable M. McDowell, Commissioner
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Ex Parte Filing

In the Matter of Corr Wireless Communications, LLC.

Request for Review of a Competitive Eligible Telecommunications Carrier High-Cost Support Decision of the Universal Service Administrative Company
WC Docket No. 05-337

Federal-State Joint Board on Universal Service, CC Docket No. 96-45

Chairman Copps and Commissioners Adelstein and McDowell:

We are writing to you to present the views of the Maine Public Utilities Commission ("Maine PUC") regarding the Request for Review of a Competitive Eligible Telecommunications Carrier High-Cost Support Decision of the Universal Service Administrative Company (the "Appeal") filed by Corr Wireless Communications, LLC ("Corr") on March 11, 2009.



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The Maine PUC supports the Appeal and urges the Commission to issue an order clarifying (a) that the interim state-by-state caps on competitive high-cost support established by the Commission¹ are not affected by a change in the number of carriers in a given state, and (b) that attempting to reduce state-by-state cap amounts as proposed by the Universal Service Administrative Company ("USAC") in this case would violate federal administrative procedure law and due process.

1. Maine Needs Continued Universal Service Support For Wireless Service

The State of Maine is among the more rural states east of the Mississippi, with a population of about 1.3 million people spread over a land mass equal in territory to the rest of New England put together. The State's topography, including its steep mountains, its islands, its heavily forested areas and its widely distributed population (especially in the more rural parts of the State) present significant challenges to the State's rural wireless carriers.

High-cost support from the Universal Service Fund has allowed Maine's wireless competitive eligible telecommunications carriers ("CETCs") to construct numerous cell sites in areas whose population and general level of economic activity would not likely justify the capital expenditures and operating costs in the absence of that support. Nevertheless despite steady high-cost funding over the past five years, wireless service in much of rural Maine still remains at a level far below that experienced in more urban settings. Residents and businesses in rural Maine continue to experience weak in-building service and a high frequency of dropped calls when driving along rural highways. Aside from the day-to-day inconvenience that substandard mobile service causes residents of rural Maine, poor mobile service also greatly hampers much-needed economic growth in Maine's rural areas and impedes effective law enforcement and public safety efforts. In addition wireless carriers provide the only telephone service in some of the most remote areas of Maine that lack landline telephone service.

Until March of 2009, two CETCs provided service in Maine, United States Cellular Corporation ("U.S. Cellular") and RCC, Minnesota, Inc., ("RCC"). Both companies have been filing regular reports with the MPUC regarding the disposition of high cost funds supplied to them, and both have constructed and operated numerous cell sites in rural Maine communities. As a result of the *Interim Cap Order*, CETC funding for Maine has been capped at approximately \$13,000,000 per year, representing the level of funding that U.S. Cellular and RCC received in March of 2008. On an annual basis, U.S. Cellular receives about \$10 million in support, whereas RCC received about \$3 million.

¹ *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-122 (rel. May 1, 2008) ("*Interim Cap Order*").

In December of 2008, RCC filed a Notice with the MPUC indicating that it had been merged into Verizon Wireless and, further, that it sought to relinquish its ETC status in the State of Maine. The MPUC issued an Order permitting RCC's relinquishment in *RCC Minnesota, Inc. SRCL Holding Company and Saco River Communications Corporation, Notice of Relinquishment of Eligible Telecommunications Carrier Designation*, MPUC Docket No. 2009-11 (Order dated March 12, 2009).

The MPUC understood that Verizon Wireless's decision to discontinue RCC's ETC status would cost the State of Maine approximately \$3 million in annual high-cost support for rural wireless build-out and operations. However, because of the fixed March 2008 cap amounts established by the Commission in the *Interim Cap Order*, we did not believe that RCC's withdrawal would have any effect on the State of Maine's overall high cost funding cap. This belief was reinforced by representatives from Verizon Wireless and RCC who confirmed the Maine PUC's understanding that following the relinquishment by RCC (now Verizon Wireless) of its ETC status an increase in U.S. Cellular's line count and/or the entry of a new CETC would provide an opportunity to increase the high-cost support for Maine up to the statewide cap amount identified above.

As the MPUC reads the USAC decision that is the subject of the Appeal (the "USAC Decision"), however, because RCC is now owned by Verizon Wireless, the cap on high cost funding for CETCs in Maine will be reduced each year for the next five years by 20% of the annualized amount that RCC was receiving in March of 2008. The MPUC believes that USAC's determination misconstrues the Commission's *Interim Cap Order*. Moreover, to the extent that USAC rests its decision on the Commission's Order in the Verizon Wireless/AllTel merger, the result would appear to be contrary to the due process rights of those affected by any such determination.

2. By Its Own Terms, the Cap Created by the Interim Cap Order Does Not Vary With the Number of ETCs in a State

The MPUC would point out that USAC's February 25, 2009 letter to Corr, from which Corr takes this appeal, grounds its decision to reduce the CETC funding cap applicable to the State of Alabama not on any provision in the *Interim Cap Order*, but instead on the *absence* of any provision in the *Verizon Wireless and Alltel Merger Order*² "for the redistribution of support to other CETCs." February 25, 2009 USAC determination at 1. The MPUC agrees that the *Verizon Wireless and Alltel Merger Order* make no reference to the

² *In the Matter of Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantic Holdings LLC. For Consent to Transfer of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements, and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act, FCC 08-258 (rel. November 10, 2008).*

“redistribution” of such support – for the simple reason that the Verizon Wireless/Alltel merger had no bearing on statewide CETC funding caps. Under the *Interim Cap Order*, the cap, once established, would remain in effect without regard to the number of ETCs seeking capped funds. *Interim Cap Order* at para. 39.

More perplexing still, the USAC Decision flatly states that the Commission’s *Verizon Wireless and Alltel Merger Order* provides that the reduction in payments to Verizon Wireless and Alltel will not result in an increase in high-cost support payments to other carriers. USAC Decision at 2. In support of this statement, USAC cites to a paragraph in that Order wherein this Commission notes that “Verizon Wireless states its understanding that the reduction in payments to Verizon Wireless will not result in an increase in high cost payments to other competitive ETCs” USAC Decision at 2, *citing Verizon Wireless and Alltel Merger Order* at para. 196. Thus, a review of the operative paragraph cited by USAC reveals that this Commission was merely noting that Verizon Wireless intended to interpret the Order so as to severely disadvantage its competitors. USAC’s Determination bootstraps the Commission’s characterization of Verizon Wireless’s desires, as expressed in the Order, into a Commission holding.

In fact, the Commission made no such determination, nor could it have given the context of the merger case then before it.

3. USAC’s Determination Violates Basic Due Process Requirements

The Interim Cap on CETC support was adopted by the Commission in the context of a notice-and-comment rulemaking. Therefore, under Section 533 of the Federal Administrative Procedure Act, any modifications to the mechanism for determining the cap would likewise need to be accomplished through a notice-and-comment process to amend the Commission’s rule, culminating in an order explaining how the rule change would be consistent with federal universal service goals and the relevant statutory principles governing universal service.

Had the Maine PUC been aware that that CETC funding cap applicable to Maine would be an issue in the Verizon Wireless/Alltel merger case, it would at the least have sought an opportunity to comment on any proposed impact to Maine’s cap, given the high importance of CETC funding for rural wireless expansion in Maine’s rural areas. In the absence of any such notice, imposing a phased cap reduction for Maine based upon a determination made by this Commission in the Verizon Wireless/Alltel case (even assuming that the Commission made such a determination – which it did not) would be fundamentally unfair and a violation of due process.

Conclusion

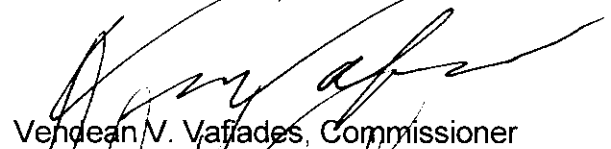
Maine continues to suffer from an inadequate mobile service network in its rural areas. In this context, Verizon Wireless's decision to relinquish RCC's CETC status in Maine constitutes a significant setback to efforts to expand and improve rural wireless service. The Maine PUC believes that a reduction of the Maine CETC cap, which will result if the USAC decision is permitted to stand could further curtail much-needed high-cost funding for rural wireless expansion.

The Maine PUC would therefore urge the Commission to grant Corr's Appeal and reject USAC's determination as being inconsistent with the explicit terms of the *Interim Cap Order*.

Sincerely,



Sharon M. Reishus, Chairman



Vendean V. Vafiades, Commissioner



John A. Cashman, Commissioner